

## **CHARTER REVISION COMMISSION**

The Charter Revision Commission met at the Wethersfield Town Manager's Conference Room on Thursday, May 1, 2014 at 7:00 pm.

Present: Chairperson Dan Silver, Vice Chairperson Steve Kirsche, T. William Knapp, Louis Laccavole, Mary Pelletier, John McAuliffe, Jr., and Mike Zaleski

Also Present: Commission Secretary Sónia Betz, Town Manager Jeff Bridges, Mayor Paul Montinieri, Councilperson Donna Hemmann and Polly Moon of the Board of Education

The meeting was called to order by Chairperson Silver at 7:00 pm.

Chairperson Silver asked if anyone had any comments on or revisions to the minutes from the last (April 17<sup>rd</sup>) meeting.

- Commissioner Laccavole addressed the top of page 3 where the minutes refer to the State statute on the common calendar, and asked for clarification as to whether Chairperson Silver had said that it had been passed or that it might be passed.
- Chairperson Silver stated that he had said it might be passed. He then requested that the minutes be amended.

**Commissioner Knapp moved to approve the minutes as amended, seconded by Commissioner McAuliffe. All those present voted "AYE" unanimously. 7-0-0**

Chairperson Silver then asked for a motion to rearrange the agenda to address the oversight of the office of the Town Clerk first, being as Mayor Montinieri and Councilperson Hemmann were present to discuss the reasons for the requests by the Council. **Vice Chairperson Kirsche moved to rearrange the agenda, seconded by Commissioner Knapp. All those present voted "AYE" unanimously. 7-0-0**

### **B) Oversight of the Office of the Town Clerk**

- Chairperson Silver reminded the Commission that they had decided at the last meeting to have representatives of the majority and minority parties come to address the reasons that they had requested for the Commission to review this topic. He then asked Councilperson Hemmann to speak first
- Councilperson Hemmann, representative for the minority party, stated that Section 501 is silent to almost everything except the appointment and some of the duties. She said that the way it currently stands, the Town Council is responsible to evaluate the Clerk annually and it is difficult because they are not in the Town Hall on a daily basis or in the office to oversee that. This proves to be awkward because the only thing that they regularly observe is her role as the Clerk of the Council at meetings. They feel that this is unfair to the Clerk when some members are only evaluating her on 2 out of 10 items on the list. They go to the Town Manager for some feedback, but don't feel that they are getting the same feel as if they were observing her every day.
  - Chairperson Silver then asked Councilperson Hemmann what the feeling is in regards to changing the appointment process to having the Manager hire/fire the Clerk, in addition to supervising. He also referenced the "indefinite term" of the position.

- Councilperson Hemmann stated that the possibility of changing the appointment process or the term had not been discussed in their group, but that they would be willing to look at it.
- Commissioner Knapp stated that there is a provision in the Charter that indicates that the Council has the power to terminate any position that it appoints and asked if the Council looked at the “indefinite term” as insulation against dismissal proceedings.
- Councilperson Hemmann said no but that when overseeing a position and not being there on a day-to-day basis to really see what is going on in the office, if something should happen you can’t really be fair and objective in an evaluation because you are not a party to the work being done, or not done.
- Commissioner Knapp then stated that him that authority to appoint and dismiss is inherent in the supervision.
- Commissioner Pelletier wanted to bring to Councilperson Hemmann’s attention the possibility of a conflict if the Council retains the authority to appoint and dismiss but not the supervision.
- Commissioner McAuliffe then asked if there have been any issues that precipitated this request, as the process has been the same since the Charter was established in 1953. He shared his view of the Town Clerk as a town historian of sorts and his feeling that the Clerk should be from Wethersfield, asking what Councilperson Hemmann’s feelings on this were.
- Councilperson Hemmann stated that she views the Clerk as a keeper of the Town’s records and that she becomes an historian in a sense by the nature of the position.
- Commissioner Knapp stated that the Clerk also has to be certified by the State.
- Chairperson Silver then asked Mayor Montinieri to address the Commission as to the majority party’s reasoning for their request to review this issue.
- Mayor Montinieri stated that the majority party shares the same concern as the minority party as far as the evaluation of the Town Clerk. He said that the Council really only gets to see about 15-20% of what the Clerk does, whereas the other 80-85% is statutorily regulated and observed more by the Town Manager. He stated that the General Statutes’ description of a Clerk speak more to towns with a strong mayor system. He stated that the Council greatly relies on the Town Manager’s feedback to evaluate the Clerk and that this is not fair to the Clerk. He stated that he doesn’t feel that the Commission needs to be concerned about the questions of appointment and term limit. He feels that the Council can still appoint and dismiss while having the Manager supervise the Clerk. He acknowledged the potential problem of having supervisory authority but not appointment and dismissal, and that any revision must be clean.
  - Vice Chairperson Kirsche stated that making the process void of political influence would be difficult without taking the power of appointment and dismissal from the Council who may not want to relinquish that power, thereby creating a situation of political implications for the Manager in evaluating the Clerk.
  - Mayor Montinieri stated that Council members are temporary and as such are hesitant to evaluate such an important position. He feels that someone with “longevity” is better suited to that.
  - He also feels that it is possible to for Council maintain appointment authority and work with the Town Manager. In the event the Manager recommends a change which is supported with evidence, Mayor Montinieri believes that the Council’s

- disagreement with that would be unusual and therefore the Council maintaining their removal power would not be problematic.
- Both Vice Chairperson Kirsche and Commissioner Knapp agreed that the written word is key and could create an awkward atmosphere if the Manager only has supervisory power.
  - Chairperson Silver said that after a series of negative evaluations, the Manager can always make a recommendation to the Council and then they can decide whether to terminate.
  - Mayor Montinieri stated that under the current arrangement the Manager could have some frustrations with the Clerk but does not have any authority over them.
  - Commissioner Pelletier said that in her view the problem is that all of the Clerks have gotten appointed due to political connections, and that she likes the idea of the Manager appointing the Clerk.
  - Commissioner McAuliffe again raised the question of whether there has ever been a problem with the way it is currently done.
  - Mayor Montinieri is aware of the political fallout that resulted from the last appointment, but does not believe that the prior ones had the same kind of impact. He also compared the appointment of the Clerk to that of the town attorney.
  - Commissioner Pelletier said that there is a difference in that the town attorney tends to change when there is a shift in power in the Town Council, but that the Clerk's term is indefinite and does not change unless the person wants to leave.
  - Mayor Montinieri stated that it is for this reason that he believes that the evaluation responsibilities should rest with the Town Manager, with him submitting such to Council for approval.
  - Commissioner Zaleski said that the Clerk's responsibility is to manage their office in an apolitical way, and that ultimately the majority party could make a change to the Clerk if they wanted to but that it appears to never have come to that.
  - Commissioner Silver expressed his belief that there is oversight from the State due to the importance of upholding the Statutes in the office of the Clerk.
  - Commissioner Zaleski stated that there is also a certain level of evaluation from the public that occurs.
  - Councilperson Hemmann and Mayor Montinieri expressed that they would be willing to go back to their respective groups and discuss the appointment process with them and get back to the Commission.
  - Mr. Paul Copp interjected stating that both the Republicans and Democrats had been heard and that the Independent party would also like to be heard. He was advised that the time for public comment was to come and that the distinction was that the Commission had heard from members of the Town Council who made the recommendations, not necessarily the parties.
  - Chairperson Silver asked if there were any other questions for Mayor Montinieri and/or Councilperson Hemmann. Being none, they left the meeting. He then referred to information sent by Town Clerk Dolores Sassano from the Connecticut Conference of Municipalities (CCM) that he requested in order to see how other towns in the State handle the issue of appointment and supervision of the Town Clerk. It is clear that in a majority of them the Town Manager has the authority to supervise.
  - Vice Chairperson Kirsche stated that he feels it is obvious that the Commission should get the input of Town Clerk Sassano as to her view of this issue.

- **Vice Chairperson moved to postpone the discussion on the reporting relationship between the Town Clerk and the Town Manager pending more information from the Town Council and the Town Clerk,” seconded by Commissioner McAuliffe. All Commissioners present voted “AYE” unanimously. 7-0-0**

#### Public Comment

- Robert Young, 20 Coppermill Rd:
  - Mr. Young commented on the date of the budget hearing stating that he believes it should stay as it is (3<sup>rd</sup> Monday in April). He also hopes that the Commission would consider having the Finance Director report to the Town Council while they maintain the reporting relationship between the Council and the Town Clerk. In regards to any increase in spending of 3% or higher, his opinion is that this should go to a referendum. He is fine with indexing as long as the percentages aren’t too high (if current is \$200,000, indexing to the equivalent of \$250,000 is not a big deal). As far as ethics/nepotism, he had emailed some files to the Commissioners and also made discs with the information consisting of Town payroll and vendor information to address the nepotism reflected in the payroll and also the transparency of the vendor information. He believes that this information should be made available to the public on the Town’s website.
- George Ruhe, 956 Cloverdale Cir:
  - Mr. Ruhe’s opinion on the supervision of the Town Clerk is that he would be very concerned with a Town Manager who does not come from Town overseeing the position of someone who is such a part of the fabric of the Town. He feels that if the Council has an issue with evaluating the Town Clerk, then they should feel the same about evaluating the Town Manager. He also feels that if someone runs for Council then they should be willing and able to evaluate the Clerk because that is part of their job. As far as the date for the budget hearing, he thinks that should remain the same. He also agrees with indexing on special appropriations, specifically with how it was stated by Vice Chairperson Kirsche at a past meeting (putting a cap on so that it is tied in with the size of the budget). He also agrees with Commissioner Pelletier’s view on the referendum for the 2% cap on the budget. He believes that it allows for some flexibility and the voice of the citizenry. He concluded by saying “if it ain’t broke don’t fix it,” but thinks that there is always room for improvement.
- Paul Copp, 100 Executive Square
  - Mr. Copp started with stating that he doesn’t care whom the Town Clerk reports to, but thinks that the terms of the evaluation should be defined for the supervisor. He also believes that this meeting’s topics are the most important that the Commission will decide on and that what is decided will affect whether the voters will support them or not.

#### Agenda Items

- A) Indexing the Cap on Special Appropriations Rather than Setting Specific Dollar Amounts
  - Chairperson Silver reminded everyone that Town Manager Bridges was going to run some figures with the Finance Director as to proper percentages of budget that would reflect inflation.
  - Town Manager Bridges stated that due to having to work on the new budget, they were unable to do this.

- Vice Chairperson Kirsche stated that he thought that Mr. Bridges had already provided these numbers to the Commission.
- Chairperson Silver stated that although Mr. Bridges had provided these verbally, he wanted something more exact that he would be comfortable including in the Charter.
- Vice Chairperson Kirsche stated that while he thinks that they would need those numbers eventually to explain to the public, but that he wouldn't want to change the percentages of the budget of 10 years ago and how it would reflect today (which they already have). He feels that the next Charter Revision Commission can decide if the percentages should change.
- Chairperson Silver said that what Mr. Bridges was going to do was provide better numbers so that the Commission would feel comfortable that the percentage they might potentially use in the Charter.
- Vice Chairperson Kirsche expressed his desire to move forward on an issue as opposed to continually tabling them.
- Town Manager Bridges stated that the objective was to make sure that the People know what the number are every year and that it is declared in the budget section of the Charter.
- Vice Chairperson Kirsche agreed, but stated that that is the responsibility of the Town's administration not the Charter. The percentages would be outlined in the Charter, but the numbers that they translate to would be declared annually with the budget.
- Chairperson Silver stated that they simply wanted to have a complete discussion before making a decision, but if someone wanted to move on the issue that would be fine. But that he felt comfortable waiting for the information from Mr. Bridges.
- Vice Chairperson Kirsche again expressed his desire to move forward as he doesn't feel that they need more information.
- Commissioner Laccavole asked for clarification as to whether the percentages provided by the Town Manager were based on the current budget.
- Vice Chairperson Kirsche explained that they reflected the budget of 10 years ago and how the limits set by the last Commission translated into percentages of that budget.
- Town Manager Bridges explained that they took the time value of the money and in order to equal that same value of \$200,000 you would need \$248,577 and what the percentage of that would be.
- Chairperson Silver stated that there had also been discussion about increasing the limits previously set and that there had been some objection to that among the Commissioners which led to the talk of indexing. And that Mr. Bridges had asked for some time to refine those numbers before the Commission made a decision.
- Vice Chairperson Kirsche then asked for a consensus that it is not the intent of the Commission to give the authority for more than the percentage of 10 years ago.
- The other Commissioners agreed.
- Chairperson Silver stated that he was not ready to vote on the issue until he sees Mr. Bridges' numbers.
- Commissioner Zaleski stated that while he appreciates Vice Chairperson Kirsche's desire to move forward, he is comfortable waiting to see the Town Manager's numbers before making a decision.
- Chairperson Silver then asked if there was any more discussion or a motion to table.
- **Commissioner Zaleski moved to table the discussion on indexing pending more specific numbers from the Town Manager, seconded by Commissioner Knapp. All Commissioners present voted. Vice Chairperson Kirsche voted "NAY." The motion passed 6-1-0**

### C) Ethics

- Chairperson Silver reminded the Commission that they had asked Atty. Jonathan Chappell to get more information on this issue. He sent Chairperson Silver the information as he was unable to attend this meeting and they had a lengthy conversation in regards to Atty. Chappell's legal opinion. Right now the Charter is basically silent on the issue of nepotism. State law, with certain caveats, does not prevent the Commission from setting some ethics standards and putting them into the Charter. The caveat being that there is a statute that indicates that a substantial conflict does not arise just because a family member is on the payroll unless that family member holds a position that is greater than any other member of that organization.
- Commissioner Pelletier stated that the first sentence of that statute says "notwithstanding the provisions of any special act, municipal charter, or ordinance to the contrary," which she interpreted as a general law that applies in absence of anything else, a baseline. She would think that the Commission could go above and beyond this.
- Chairperson Silver said that they could not go beyond the statute, but could make provisions in the Charter for ethical considerations and standards. Atty. Chappell's interpretation of the statute is that if a family member is employed as a teacher, coach, etc. in the school system that it cannot be deemed to be a substantial conflict, and if the Commission includes a provision in the Charter that makes it a conflict it would be in violation of that State statute.
- Commissioner Knapp noticed the absence of the word "substantial" in Chairperson Silver's last sentence and asked if there was a difference between a conflict and a substantial conflict, which to him there would be.
- Vice Chairperson Kirsche agreed with Commissioner Pelletier on the wording of the Statute ("notwithstanding the provisions...") and questioned whether the Charter would trump the statute or the statute trump the Charter.
- Chairperson Silver said that statute always prevails, per the opinion of the town attorney. He said that there were other considerations that the Commission needs to discuss. He brought the Commission's attention to a decision by the State Department of Labor (included in packet by Atty. Chappell) pertaining to a case out of Waterbury in which the Board of Education attempted to install a provision in the bylaws for nepotism and the unions decided that it constituted a change of work conditions under their contract. The Department of Labor (no court decision) decided that any procedure, policy or charter amendment that deals with nepotism constitutes a change of work conditions under labor law. As such each and every union contract would have to be renegotiated, which is subject to mediation and arbitration and which could be very costly to the Town.
- Commissioner Pelletier stated that the case in Waterbury could be distinguished from Wethersfield in that it was the Board of Education that enacted the policy there, but in Wethersfield's case it would be the People, the electors, voting for it. And the Commission and the electors don't have a part in the collective bargaining. But she also recognizes that it would not necessarily avoid litigation.
- Chairperson Silver said that he would make a note to discuss with the Atty. Chappell whether or not a Charter revision would trump an existing union contract. He did say that Atty. Chappell's suggestion, being as there is such a great interest in doing something, would be to refer this back to the Town Council to make an amendment to the Town's ethics Code since it does not currently take nepotism into account. Atty.

Chappell also indicated to Chairperson Silver that the provision would be difficult to word in terms of defining at what point something becomes nepotism.

- Chairperson Silver brought the Commission's attention to a provision in Rocky Hill's Charter (section 907) that addresses conflicts of interest. He said that the question is whether it is better to change Wethersfield's Charter or the Code.
- Commissioner Laccavole asked Chairperson Silver to refer back to the State statute, and use the Board of Education as an example for clarification. His understanding was that the conflict starts to occur at a higher level, and in the Board of Education hierarchy what would be considered "lower" level?
- Chairperson Silver said that what he was told was that the Commission could not, under the Statute, legally state that it would be a conflict if someone who was the immediate family member of an elected official served as a teacher or paraprofessional in the school system.
- Commissioner Laccavole countered that a teacher may be considered somewhat higher because above them is the administration.
- Commissioner Pelletier stated that it speaks of a class of people, not necessarily in the same building. Examples such as a head of maintenance or a principal.
- Chairperson Silver stated that the problem is that the Statute is vague and subject to interpretation. He wants to avoid adopting something that is potentially actionable and that would cause a court case.
- Vice Chairperson Kirsche said that he looks at things differently. Wethersfield is a small town and that that in and of itself lends itself to innate conflicts of interest. He thinks that if you go too far with this that it could remove good people from consideration. He used the example of Donna Forrest (teacher) and Matthew Forrest (Board of Education) and how he, knowing them personally, does not see how Matthew is influencing Donna's work. The other side of it is the debacle that happened with the Board of Education was horrific and cannot be allowed to happen again.
- Chairperson Silver agreed that the situation was an embarrassment to the Town. He also explained that the Ethics Code allows for the Commission to set up a procedure for hearings and that the Code need to be changed to prevent something like that from happening again.
- Commissioner Pelletier commented that there has not been a change to the Code and that the Council has had ample time to do so. The Commission has the opportunity to add something. The Ethics Commission, per the Code, can hold hearing and make recommendations to the Council, which they did in the Board of Education case and the Council didn't act on it. She suggested that they take what is in the Code and amend it to give the Ethics Commission the final decision as opposed to just an advisory role.
- Commissioner McAuliffe stated that he has not seen any blatant abuse of this, outside of the Board of Education case. He says in Wethersfield and surrounding areas it happens regularly with reasonable decisions made as to whom gets hired where.
- Commissioner Pelletier feels that nepotism and ethics can be divided.
- Town Manager Bridges voiced that when making a hiring decision, you want the best qualified person. Sometimes that may be the family member of someone in authority. Where the conflict comes in is whether that person used their position within the organization to somehow influence the appointing authority to hire the family member. Being that Wethersfield is a small town, family members will be hired, but the point is to keep the process clean.

- Chairperson Silver stated that in his experience with Town government that when there has been a situation of potential conflict that people have disqualified themselves from the situation.
- Commissioner Knapp added to that by saying that at times the town attorney is consulted in these situations.
- Commissioner Silver said that the ethics problem that the Town had really had nothing to do with the issue the Commission is discussing. He has no objection to the Rocky Hill example because it requires that an individual to disqualify themselves in the event of a conflict of interest.
- Commissioner Pelletier opined that while it was good to know that no such issues had arisen in Wethersfield that it would not hurt to codify it in some way and make it a requirement.
- Vice Chairperson Kirsche agreed.
- Chairperson Silver stated that then the question becomes whether to include it in the Charter or the Ethics Code, and that he would lean toward the Code to avoid potential union issues.
- Commissioner McAuliffe agreed.
- Vice Chairperson Kirsche asked how there would be union issues if the Commission would codify what Rocky Hill had.
- Commissioner Silver again stated that the question is where the provision would belong.
- Vice Chairperson Kirsche that it also makes a statement that the next time someone thinks to do something like this that they would stop and remember that the very Charter has been changed because of what happened.
- Commissioner Knapp said that that probably would not have controlled that particular situation
- Commissioner Pelletier stated that the Rocky Hill example deals more with financial gain whereas the case in Wethersfield was more for personal gain. The Board of Education changed their ethic rules so as to address both financial and personal benefits. She also said that she has a hard time believing that a union contract could trump a Charter. Not to say that complaints wouldn't be raised, but that the Charter is changed and voted on by the public who are not bargaining with the unions.
- Commissioner Knapp countered that the voters cannot decrease a working condition.
- Chairperson Silver finds it difficult that the Commission could overturn the provision of a signed contract by the adoption of a Charter, but that he would ask Atty. Chappell his opinion and invite him to the next meeting to discuss it. He wants to determine whether the Commission wants to modify the Charter or make a recommendation to modify the Code.
- Commissioner Knapp stated that his feeling was that there was some liking around the table for the Rocky Hill example.
- Vice Chairperson Kirsche said that he would support changing it to conflict of interest/ethics and add "financial, or other personal interest."
- Town Manager Bridges asked what would qualify as "personal interest." Better wording would be "personal gain."
- Commissioner Pelletier stated that she thinks that the provision should be in the Charter because the Council has not made a change to the Code in the aftermath of the Board of Education scandal.
- Commissioner Knapp agreed it should be in the Charter.
- Commissioner McAuliffe has reservations about it being in the Charter and as such would prefer to see a recommendation to Council.



- Commissioner Zaleski doesn't think they would be breaking any new ground by putting the provision in the Charter, based on Rocky Hill having it in theirs. He would however like to have the language refined to be appropriate for Wethersfield since it is a different Town.
- Commissioner Kirsche would like the provision in the Charter.
- Commissioner Laccavole would like the provision in the Charter, although he would like to clarify that he is only stating where he would like it to be not what it should specifically say.
- Chairperson Silver thinks it should be in the Code because of the potential complications it could bring in the delay in adopting the Charter.
- Commissioner Pelletier that there could be language drafted to avoid conflict.
- Commissioner Zaleski said that the Rocky Hill paragraph is very similar to the many conflict of interest statements that he has had to sign. He doesn't think that it will significantly impact union contracts but that the Commission should have it reviewed before making a decision.
- Chairperson Silver stated that, with the Commission's approval, he would contact Atty. Chappell in regards to the Commission's feeling that they want to do something along the lines of Rocky Hill's paragraph.
- Commissioner Zaleski reminded the Commission that they could draft these changes and the Council could kick it out, but that he is okay with that because he wants this Commission to be more progressive.
- Chairperson Silver requested a motion to table the discussion.
- **Commissioner McAuliffe moved to table the discussion on ethics and nepotism pending further discussion with the Town Attorney, seconded by Commissioner Knapp. All Commissioners present voted "AYE" unanimously. 7-0-0**

#### D) Setting the Date of the Annual Budget Hearing

- Chairperson Silver started by saying that this issue was brought forth by the Democratic Party. He spoke to the Superintendent of Schools as to the possibility of a statewide common calendar and how that would affect Wethersfield. The Superintendent stated that he didn't think that it would change anything as the State has not yet voted on the issue. Chairperson Silver discussed it with Mayor Montinieri and he agreed that changing the date no longer seemed to make much sense.
- Vice Chairperson Kirsche was concerned that changing the date would put more pressure on the Town Manager.
- Town Manager Bridges stated that changing the date on the public hearing does not affect his office that much because he has to have the budget to the Council by the first Monday in April, so having the hearing on the second or third Monday wouldn't matter.
- Vice Chairperson Kirsche clarified that it compresses the time in which the Council has to adopt the budget.
- Chairperson Silver stated that since the future of school vacations is unknown, it doesn't make sense to change the date of the hearing.
- **No motion was made; therefore the date of the annual budget hearing remains the same.**

Chairperson Silver stated that he will be traveling in two weeks and unable to be at the meeting scheduled for May 15<sup>th</sup>, but that he would leave it to the discretion of the Commission. Vice Chairperson Kirsche feels that the topics to be discussed are very important and the whole

Commission should be present. After much discussion, it was decided to cancel the meeting that was scheduled for Thursday, May 15<sup>th</sup>.

The next meeting will be held on Thursday, May 29, 2014 at 6:30 pm.

**Commissioner Pelletier moved for adjournment at 8:52 pm. Commissioner Knapp seconded. All those present voted AYE unanimously. 7-0-0**

Respectfully Submitted.

Sónia Betz, Secretary